

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 691 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

SAGAR RAMA HARDAS

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Appearance:

MR AJ DESAI, APP, for Petitioner

MR PN BAVISHI for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/08/98

ORAL JUDGEMENT

1. This is an acquittal appeal arising out of the judgment and order passed by the learned Judicial Magistrate, First Class, Bhanvad, on 11th May, 1990 in Criminal Case No.20 of 1986.

2. The respondents herein were the original accused who were charged under Section 498-A of the Indian Penal

Code and were acquitted after the trial.

3. The facts of the case can be briefly narrated as under:-

3.1 Respondent No.2-original accused No.2 is the son of original accused No.1 and accused No.3 is the mother of accused No.2 and wife of accused No.1. Accused No.2-Bhima Rama was married to Bai Nathi. It is the case of the prosecution that Bai Nathi was harassed by the present respondents and because of the harassment and ill-treatment by the respondents Bai Nathi committed suicide. On 26th September, 1985, deceased Nathiben consumed or was forced to consume poison, which ultimately caused her death, as per the prosecution case. Upon her death, her relatives were informed. The police also learnt about the said incident and Inquest Panchnama was prepared. The dead body was sent for postmortem. The Police whereupon had registered an offence vide Bhanvad Police Station C.R. No.14/85 and investigated the matter. At the end of the investigation, the police found sufficient evidence against the accused persons and filed charge sheet against the respondents under Section 498-A of the Indian Penal Code. The learned Magistrate, after providing copies of the investigation papers to the accused persons, framed charge at Ex.14. The accused persons pleaded not guilty and expressed their desire to face the trial.

3.2 After considering the evidence on record, the learned Magistrate came to a conclusion that the prosecution had failed to establish the case against the accused and, ultimately, acquitted all the three accused persons. Being aggrieved by the said judgment and order regarding acquittal, the State has preferred this appeal on the grounds stated in the memo of appeal.

4. I have heard Mr. A.J. Desai, learned Additional Public Prosecutor for the appellant and Ms. S.J. Dave appearing on behalf of Mr. Bavishi for the respondents.

5. Mr. Desai has urged that the learned Magistrate has not taken into consideration the cogent evidence of P.W. Ranmal Rambhai, Vejiben, Sitaben and others and, therefore, the finding arrived at by the learned Magistrate is perverse, improper and unwarranted.

6. Ms. Dave on the other hand has stated that there is total absence of cogent evidence in the prosecution case. The witnesses, in general, have not supported the prosecution case. The witnesses who supported the

prosecution case in the examination-in-chief have broken down during the process of cross-examination and, as such, the learned Magistrate could not have placed any reliance on the evidence of these witnesses and, therefore, the judgment and order passed by the learned Magistrate does not call for any interference and the appeal may, therefore, be dismissed.

7. The record and proceedings are before this Court and are thoroughly perused.

8. The glaring feature which the learned Additional Public Prosecutor is not able to explain is that the complainant-B.K. Sharma, upon whose complaint/F.I.R. the offence came to be registered and investigated upon, has not been examined before the learned Judicial Magistrate, First Class nor has the original F.I.R. come on record or proved before the learned Magistrate. The prosecution has also not examined the Investigating Officer. The prosecution case, therefore, suffers from this basic infirmity.

9. The second glaring weakness of the prosecution case that has come on record is that, admittedly, the police had prepared the Inquest Panchnama and the dead body was sent for postmortem. The postmortem notes are not produced on record. The certificate of cause of death is also not produced on record and the doctor who performed the postmortem has also not been examined. The prosecution has, therefore, not been able to establish the actual cause of death. As per medical evidence, it transpires that viscera of the stomach, spleen and kidney were collected and sent for analysis. But no such report has been produced before the learned Judicial Magistrate, First Class nor has the prosecution, after obtaining the report from the Chemical Analyser regarding viscera, obtained any final opinion of the Medical Officer who performed the postmortem. As such, with these vital infirmities, the prosecution evidence has to be examined.

10. The prosecution has examined as many as 12 witnesses. Witnesses-Bhima Masri, Ex.29 and Vajsi Rajsi, Ex.29, who are the Panch witnesses to the Panchnama of place of offence have not supported the prosecution case at all. They stated categorically that they know nothing about the drawing of the Panchnama. They had simply put their thumb impression on the Panchnama on being asked by the police. Witness-Devsri Arjan, Ex.30, who was a Panch to the Panchnama of the place where the dead body of the deceased was found has also not supported the prosecution case and the same is the case with Panch-Lakha Amba,

Ex.32, who was also a Panch witness to the said Panchnama. Panch-Jairam Gova, Ex.33, who was a Panch to the Inquest Panchnama, states that he was a Panch to the Inquest Panchnama, but as the dead body was covered under a cloth, he does not know what was the condition of the dead body. The dead body was not shown to him by removing the cloth. He admits to have put his signature on the Panchnama and states that Vejiben was the second Panch.

10.1 Vejiben is examined twice. She is examined at Ex.37 and Ex.38. She is examined twice because she has acted in dual capacity, one as a Panch and the other as a witness. In her deposition, Ex.37, as Panch to the Inquest Panchnama, she states that she had seen dead body of Bai Nathi. Froth was coming out of her mouth and there were black linear marks around her throat and knees. She states that five persons has signed the Panchnama.

10.2 In her deposition Ex.38, as a witness, she states that she is the sister of deceased-Nathiben. She states that Nathiben was married to accused No.2 about 5-6 years prior to the incident and Nathiben used to complaint that her in-laws were harassing and ill-treating her. She states that Nathiben had, therefore, left her house and was staying with her parents for two months, whereafter, there was a compromise because of intervention by Bhima Duda and Ranmal Rama. After the compromise, when she came from her marital home, she did not complain of anything, but the witness felt that she was not comfortable. On the day of the incident, she had gone to Pachhtar and when she came back from Pachhtar, she was told that Nathiben had died because of snake bite. Then she says that, if Nathiben has consumed poison, the reason therefor would only be known to Nathiben and the Almighty. She has been cross-examined and in cross-examination, she admits that Nathiben, when she came from her marital home, did not complain about any ill-treatment either by her husband or by her parents in-law.

11. Witness-Sita Amba is examined at Ex.39. She says that, earlier Nathiben and her in-laws had some disputes and Nathiben had gone to her parental home and she was brought back to her marital home with the intervention of Bhima Duda and Ranmal Rama. Thereafter, Nathiben used to visit his (witness's) house and when they inquired about her position, she used to nod her head, but did not complain. During cross-examination, she admits that Nathiben had never complained to him about ill-treatment.

She also admits that Nathiben never complained to her about ill-treatment or harassment by her parents-in-law or her husband. She admits that there could be reasons and reasons to commit suicide.

12. Witness-Karsan Jiva is examined at Ex.41. He states that he was informed that Nathiben had sustained a snake bite and, therefore, they went to Sarera and reached there at about 8 p.m. He became suspicious on asking the details as to how she sustained snake bite. Ultimately, police was informed as black spots were found on the neck and other parts of the body. The dead body was taken for performing postmortem and Maldey had gone to inform the police about the same. The witness says that he felt that his sister was possibly administered poison. During cross-examination, he admits that the complaint is lodged by his elder brother-Maldey. He says that he suspected the administration of poison because of the gossip in the female folk.

13. The last witness is Unja Vira, who is examined at Ex.42. He proceeds to say that he was informed that Bai Nathi had fallen sick. He, therefore, rushed to the place where he found that Nathi had already expired and her dead body was lying. He was informed that Bai Nathi had sustained snake bite. On being asked in detail, the in-laws were not able to give proper reply and, therefore, he suspected some foul play. He states that there was a medical opinion received from hospital that Nathiben was poisoned. It may be noted at this stage that no such report is produced on record. During cross, he states that his sister used to complain about ill-treatment and he had conveyed the same to the intervenors, but neither him nor the intervenors had, thereafter, visited the place of the accused persons. It transpires that this was prior to the compromise that was entered into between the parties. The cross-examination also reveals that this witness has made number of improvements in his original version given in the police statement.

14. To the questions put to the respondents under Section 313 of the Code of Criminal Procedure, they answered that they know nothing about the incident and they have been falsely implicated.

15. Thus, upon careful inspection of the record, it is found that the prosecution has not been able to establish the actual cause of death of the deceased. The prosecution has not examined the complainant and has also chosen not to examine the Investigating Officer. It also

transpires that the first information was given to the police by a private person Malde, who happens to be brother of the deceased and no F.I.R. based on that information is brought on record. Barring suspicion latched by witnesses who have no personal knowledge, there is not an iota of evidence to show that deceased died of poisoning least to show that she committed suicide. There is no evidence to connect the accused with her death. On the contrary, there is evidence that deceased never complained of any ill-treatment by her husband and parents-in-law who are the accused/respondents.

16. Under these circumstances, this Court is of a firm view that there is nothing to interfere with the judgment and finding recorded by the learned Judicial Magistrate, Bhanvad in Criminal Case No.20 of 1986. The appeal is found to be devoid of merits and is, therefore, dismissed.

[ A.L. DAVE, J. ]

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